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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 IN RE: INCRETIN-BASED
11 THERAPIES PRODUCTS
12 LIABILITY LITIGATION

13 *This Document Relates to All Cases*
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Case No. 13-md-2452-AJB-MDD

**ORDER GRANTING JOINT
MOTION TO APPROVE EIGHTH
AMENDED STIPULATION AND
ENTER ORDER RELATED TO
FILINGS BY DERIVATIVE
PLAINTIFFS ACTING AS INTERIM
ESTATE REPRESENTATIVES**

18 On March 30, 2022, the Plaintiffs' Steering Committee ("PSC") and
19 Defendants Eli Lilly and Company, Amylin Pharmaceuticals Inc., Merck Sharp &
20 Dohme Corp., and Novo Nordisk Inc. ("Defendants") filed a joint motion for
21 approval of an Eighth Amended Stipulation concerning derivative plaintiffs acting
22 as interim estate representatives for a deceased Injured Party under certain
23 circumstances, as stipulated by the Parties. The Parties have moved this Court to
24 approve the amended stipulation and further order that such stipulated Interim
25 Estate Representatives have authority to execute authorizations for the collection
26 of medical and other records for all purposes in MDL 2452.

27 ACCORDINGLY, WHEREAS the Court finds that the PSC and Defendants
28 have stipulated as follows:

1 A. With respect to any action currently pending or hereafter directly filed
2 or transferred into this MDL, in the event a state or federal court of competent
3 jurisdiction has not appointed a person to serve as a representative for the estate
4 and/or beneficiaries of a deceased Injured Party—

5 (i) the person designated as the personal representative in the Will
6 of the decedent (if any); and/or;

7 (ii) the surviving spouse, with the consent of any and all children of
8 the decedent , and anyone identified as the personal representative in the Will (if
9 any); and/or

10 (iii) a beneficiary who succeeds to a cause of action under the Will
11 (if any) or state intestate law, with the consent of any surviving spouse, any adult
12 children of the decedent, and anyone identified as the personal representative in the
13 Will (if any), may act as an Interim Estate Representative for all purposes related
14 to the pre-trial proceedings of any and all claims related to the Injured Party pending
15 in MDL 2452.

16 B. Where the decedent Injured Party has minor children and/or
17 beneficiaries, defendants reserve the option of requiring the appointment of a
18 person who is formally qualified and/or appointed by another state or federal court
19 to represent the estate, with 90 days' notice and cause shown.

20 C. For cases currently pending in MDL 2452 ("Pending Case"), any party
21 seeking to act as an Interim Estate Representative for a deceased Injured Party shall
22 have 90 days from the date of this Order to serve on the defendants to such action
23 a Declaration in the form attached hereto as Exhibit A (where the Injured Party was
24 intestate) or Exhibit B (where the Injured Party had a Will). For cases transferred,
25 removed or directly filed in MDL 2452 after the date of this Order, any party
26 seeking to act as an Interim Estate Representative for a deceased Injured Party shall
27 have 90 days from such transfer, removal, or direct filing to serve on the defendants
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1 to such action a Declaration in the form attached hereto as Exhibit A (where the
2 Injured Party was intestate) or Exhibit B (where the Injured Party had a Will). Any
3 such Declarations shall require the signature of the party seeking to serve as Interim
4 Estate Representatives.

5 D. In the event an Injured Party dies after said plaintiff's case has been
6 removed, direct filed, or otherwise transferred to MDL 2452, plaintiff's counsel
7 shall promptly serve, in accordance with Federal Rule of Civil Procedure 25, a
8 notice of said death with the Court, and thereafter, shall have 90 days from the date
9 of said filing to amend the complaint naming: (1) a derivative plaintiff who is
10 formally qualified and/or appointed by another state or federal court to represent
11 the estate of the Injured Party, or (2) an Interim Estate Representative who must
12 serve a Declaration in accordance with the provisions of paragraph C, above. No
13 provision of this Stipulation shall preclude a defendant from filing a Suggestion of
14 Death pursuant to Rule 25 at any time.

15 E. Any objections to the sufficiency of a Declaration served in
16 accordance with Paragraph C or D of this Stipulation shall be identified with a
17 deficiency notice served upon the Interim Estate Representative's counsel and
18 Plaintiffs' Co-Lead Counsel in MDL 2452 within 30 days of the filing of the
19 Declaration, or said objections as may be discerned from the face of the Declaration
20 are waived.

21 F. Upon timely notice of objection by counsel for any Defendant, the
22 Interim Estate Representative shall be given 30 days to cure or otherwise deny any
23 alleged deficiency in the Interim Estate Representative's Declaration. In the event
24 the Interim Estate Representative does not cure said deficiency, or advises
25 Defendant that the Interim Estate Representative's Declaration was filed consistent
26 with this Order, then Defendants shall exercise all reasonable efforts to meet-and-
27 confer with the Interim Estate Representative's counsel (for a period of at least 14
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1 days). If, after the meet-and-confer process, any objections remain unresolved,
2 Defendants shall raise all remaining objections in a motion to dismiss filed with the
3 Court that shall be filed within 120 days of the filing of the Declaration, or the right
4 to raise any objection with respect to the status of the Interim Estate Representative
5 under this Stipulation is waived. Any motion to dismiss filed in this regard shall be
6 without prejudice, on Notice filed by ECF, and permit 14 days for an opposition, if
7 any.

8 G. The appointment of an Interim Estate Representative under the
9 provisions of this stipulation shall be valid until March 30, 2023, at which time the
10 Federal Rules of Civil Procedure shall govern the capacity of a party to sue. For
11 purposes of relation back and application of the statute of limitations after said date,
12 all filings made by and all actions taken by an Interim Estate Representative prior
13 to said date shall be considered valid and effective. In the event that a case in which
14 an Interim Estate Representative has been appointed is dismissed without prejudice
15 for any reason, the parties and their Counsel have agreed that any re-filing of claims
16 related to that case shall be filed in this Court.

17 H. Notwithstanding any other provision of this Stipulation, the filing of a
18 Motion to Amend the Complaint to replace the Interim Estate Representative with
19 a person who has the capacity to sue under the Federal Rules of Civil Procedure
20 shall be required (i) prior to trial of the action in this MDL proceeding, (ii) prior to
21 compromise of the claim, (iii) prior to any appeal taken, or (iv) upon remand or
22 transfer of the action to another state or federal court. Consistent with Federal Rules
23 of Civil Procedure 17(a)(3) and 25, prior to the transfer of any case claiming
24 wrongful death and/or survival actions to another venue, the Interim Estate
25 Representative shall have 90 days, or more time for cause shown, in which to file a
26 Motion to Amend the Complaint to substitute a personal representative or other
27 party as the plaintiff in the action, if required. All rights of the defendants are
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1 reserved with respect to responding to any Motion to Amend the Complaint. Upon
2 the granting of any motion to Amend the Complaint to replace the Interim Estate
3 Representative with a person who is formally qualified and or appointed by another
4 state or federal court to represent the estate of the Injured Party, the status of the
5 Interim Estate Representative under this stipulation shall cease. In the event a
6 Motion to Amend is not filed, or does not proffer a person who is formally qualified
7 to represent the estate in accordance with the terms of this paragraph, all rights and
8 defenses of the parties as to the pending Complaint are reserved.

9 I. For Pending Cases, the naming of an Interim Estate Representative in
10 full satisfaction of the terms of this Stipulation shall relate back to the date on which
11 the Complaint was filed, provided that the Complaint was originally filed by the
12 party who came to be the Interim Estate Representative, or by another person who
13 could have met the requirements to serve as Interim Estate Representative.
14 Defendants will not argue that the statute of limitations continued to run in the
15 period after the initial filing of a complaint but prior to the appointment of the
16 Interim Estate Representative.

17 J. For cases filed after the date of this Order by a person who becomes
18 an Interim Estate Representative in full satisfaction of the terms of this Stipulation,
19 the Defendants will not argue that the statute of limitations continued to run after
20 the initial filing of the Complaint.

21 K. Nothing in this Stipulation shall be construed to waive any objection
22 to any applicable statute of limitations defense or any other defense based on
23 timeliness as to any claim asserted, or to be asserted, in connection with the alleged
24 Injured Party on any ground other than as set forth in Paragraphs I and J above.
25 Nothing in this Stipulation may be construed as a waiver, to any extent, as to any
26 party, with respect to any action not pending or subsequently transferred to, or filed
27 in, this MDL proceeding.
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1 L. This Stipulation may be terminated on 60 days' notice by any Party,
2 and this Stipulation shall, upon such termination, not be applicable with respect to
3 any subsequent case filed or transferred into this MDL, but such termination shall
4 not have retroactive effect with respect to any case filed or transferred prior to its
5 termination.

6 NOW THEREFORE this Court approves this Stipulation and further
7 ORDERS:

8 1. The Court further holds and otherwise appoints the Interim Estate
9 Representative to be the "personal representative," as defined in the Health
10 Insurance Portability and Accountability Act ("HIPAA"), of the Injured Party's
11 estate. A "personal representative" is "an executor, administrator, or other person
12 [who] has authority to act on behalf of a deceased individual or of the individual's
13 estate." 45 C.F.R. § 164.502(g)(4).

14 2. Moreover, this Court finds that a Declaration signed by the Interim
15 Estate Representative is sufficient and appropriate to be relied upon by all covered
16 entities, as defined in HIPAA, 45 C.F.R. parts 160 and 164, which includes all
17 physicians, hospitals, pharmacies, or other health providers or practices, to disclose
18 the Injured Party's records to the Interim Estate Representative and or to any other
19 person, party, or entity who receives a records request or release signed by the
20 Interim Estate Representative.

21 3. Nothing herein is intended to limit any rights under Federal Rules of
22 Civil Procedure 17, 21, or 25 with regard to the substitution of plaintiffs.

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1 4. No other rights, authority, or entitlements are granted to the Interim
2 Estate Representatives in any other state or federal court, or in any proceeding, or
3 regarding any matters or transactions, that are not expressly stated in this order.

4 **IT IS SO ORDERED.**

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7 Dated: March 30, 2022

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9 Hon. Anthony J. Battaglia
10 United States District Judge
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